

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

ROBERT LOVATO,

Petitioner,

vs.

No. CV 18-00745 RB/GBW

FNU LNU,  
WARDEN, FCI FLORENCE,

Respondent.

**ORDER TO TRANSFER**

THIS MATTER is before the Court *sua sponte* on the Review of Motion to Uphold Prisoner's Judgment filed by Petitioner, Robert Lovato (Doc. 1) ("Petition"). In his Petition, Lovato asks this Court to review the Bureau of Prison's decision to grant him four months, rather than six months, placement in a residential reentry center ("RRC"). (Doc. 1 at 4.) The Court characterizes his filing as a petition for writ of habeas corpus under 28 U.S.C. § 2241 and orders that the case be transferred to Colorado, the District where Lovato is incarcerated.

Lovato originally filed his Petition in his criminal proceeding, No. CR 16-00361 JCH, seeking to have the Court uphold his sentence by ordering the Bureau of Prisons ("BOP") to grant him additional time in RRC placement. (*See id.*) However, Lovato's Petition does not challenge his conviction or sentence in CR 16-00361 but, instead, challenges the manner in which his sentence is being carried out by the BOP. *See, e.g., Woodall v. Fed. Bureau of Prisons*, 432 F.3d 235, 243 (3rd Cir. 2005); *Levin v. Apker*, 455 F.3d 71 (2nd Cir. 2006) (challenge to denial of placement in CCC is not an attack on lawfulness of the sentence, but rather an attack on execution of the sentence, and is governed by § 2241); *Crim v. Benov*, No. 1:10-cv-01600-OWW-JLT HC, 2011 WL 1636867 (E.D.Cal. Apr. 29, 2011) (challenge to alleged failure by

BOP to properly apply the Second Chance Act was challenge to the execution of the sentence and maintainable only in a habeas corpus proceeding); *Kraft v. Cruz*, No. 3:09-cv-1526-M ECF, 2010 WL 882993 (N.D. Tex. Mar. 9, 2010) (finding action to contest placement of only 30–60 days in RRC cognizable under § 2241).

Lovato may seek review of the manner in which the BOP is carrying out his sentence only in the federal district where Lovato is incarcerated. *Rumsfeld v. Padilla*, 452 U.S. 426, 442–43 (2004). Lovato is presently incarcerated at FCI Florence in the State of Colorado. (Doc. 1 at 1.) In the interests of justice, the Court will transfer this proceeding to the United States District Court for the District of Colorado. 28 U.S.C. § 1404(a).

**IT IS ORDERED** that the **CLERK** is directed to **TRANSFER** this case to the United States District Court for the District of Colorado.

  
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ROBERT C. BRACK  
SENIOR U.S. DISTRICT JUDGE